

■ §2.13 INITIAL HEARING; PROCEDURE.

(a) An initial hearing shall be conducted by a single hearing examiner unless the Regional Commissioner orders that the hearing be conducted by a panel of two examiners. The examiner shall discuss with the prisoner his offense severity rating and salient factor score as described in §2.20, his institutional conduct and, in addition, any other matter the examiner may deem relevant.

(b) A prisoner may be represented at a hearing by a person of his or her choice. The function of the prisoner's representative shall be to offer a statement at the conclusion of the interview of the prisoner by the examiner, and to provide such additional information as the examiner shall request. Interested parties who oppose parole may select a representative to appear and offer a statement. The hearing examiner shall limit or exclude any irrelevant or repetitious statement.

(c) At the conclusion of the hearing, the examiner shall discuss the decision to be recommended by the examiner and the reasons therefor, except in the extraordinary circumstance of a complex issue that requires further deliberation before a recommendation can be made. Written notice of the official decision, or the decision to refer under §2.17 or §2.24, shall be mailed or transmitted to the prisoner within 21 days of the date of the hearing, except in emergencies. Whenever the Commission initially establishes a release date (or modifies the release date thereafter), the prisoner shall also receive in writing the reasons therefore.

(d) In accordance with 18 U.S.C. 4206, the reasons for establishment of a release date shall include a guidelines

evaluation statement containing the prisoner's offense severity rating and salient factor score (including the points credited on each item of such score) as described in §2.20, as well as the specific factors and information relied upon for any decision outside the range indicated by the guidelines.

(e) No interviews with the Commission, or any representative thereof, shall be granted to a prisoner unless his name is docketed for a hearing in accordance with Commission procedures. Hearings shall not be open to the public.

(f) A full and complete record of every hearing shall be retained by the Commission. Upon a request, pursuant to §2.56, the Commission shall make available to any eligible prisoner such record as the Commission has retained of the hearing.

Notes and Procedures

■ 2.13-01. Examiner Functioning.

Examiners conduct hearings at the institution of confinement according to a printed schedule. The appropriate Case Manager is also in attendance. A recording device is used to record the interview.

The hearing summary is dictated following each hearing. Except where the case is "continued to the Commission's Office" for some unusual reason, the summary includes a recommendation relative to parole, revocation, or continuance. At the conclusion of the hearing, the prisoner (and his representative) is informed of the examiner recommendation (and the fact that his recommendation is subject to review by the Regional Commissioner). If there is a split recommendation (when two examiners are present), the prisoner is told the alternative recommendations (examiners need not be identified by recommendation). In original jurisdiction cases, the prisoner is told the alternative recommendation.

■ 2.13-02. Representation.

(a) Representation is normally limited to one person. However, it is within the hearing examiner's discretion, where appropriate, to permit additional representatives to appear. Any continuance due to the absence of a prisoner's representative shall be at the discretion of the hearing examiner and shall be granted only for good cause. A brief memo to the file is prepared.

(b) At local or institutional revocation hearings, a person other than an attorney (Member of the Bar) shall be limited to the role of a witness or representative except that where permissible by state law, a law student may function in the role of an attorney provided (i) the inmate knowingly and intelligently consents; and (ii) the law student is under the direct supervision of a member of the bar (who is physically present). However, representation by both law student and supervisor shall not be permitted. An attorney or other representative at any other hearing shall be limited only to the role of representative as previously defined.

(c) The prisoner and his representative will normally be entitled to be present during the entire hearing except during deliberations of the decision-makers, or where institutional security would be jeopardized and/or personal safety of adverse witnesses might be involved. If the prisoner is removed at the request of the hearing examiner, the reasons for such exclusion from the hearing must be well documented into the record. A prisoner's representative will also be allowed to be present when the examiner informs the prisoner of the recommendation and reasons regardless of the type of hearing.

(d) In cases where (1) the witness will be unavailable, (2) wishes to give testimony containing matters exempt under the statute, or (3) the testimony of the witness would be adverse in nature and the witness does not wish, for proper grounds, to give the testimony in the presence of the prisoner, the prisoner may be removed from the hearing, or in the alternative the witness may offer a written statement to be used by the hearing examiner during his deliberations. If at all possible, this written statement should be submitted by the witness well in advance of the hearing.

(e) If the written statement so offered contains exempt material, and the witness represents a government agency, it is the duty of that witness to determine what material is exempt and to summarize that material for the benefit of the prisoner. If the witness is a private person, the Commission will perform that task in advance of the hearing. Where the material is submitted directly to the hearing examiner, the summary will be given to the prisoner along with his Notice of Action.

(f) Pursuant to 28 C.F.R. 2.55(a)(3), upon the prisoner's request, a representative shall be given access to the presentence investigation report reasonably in advance of an initial hearing, interim hearing, or a fifteen-year reconsideration hearing, pursuant and subject to the regulations of the Bureau of Prisons. Disclosure shall not be permitted with respect to confidential

material withheld by the sentencing court under Rule 32(c)(3)(A). Bureau of Prisons personnel are responsible for implementing the above procedure. Note: This procedure does not apply to rescission or revocation hearings.

(g) *Reporter or Recording Device.* Reporter or recording devices brought in by the prisoner or his attorney/representative are not permissible.

■ 2.13-03. *Computation of guidelines.*

The guidelines evaluation worksheet will be completed at all initial hearings.

■ 2.13-04. *Provisions of Reasons.*

Reasons following the appropriate guideline format will be typed on all Notices of Action denying a parole date or granting a presumptive or effective parole date. However, repetition of the reasons already given is not required (a) when an effective date is granted as a result of a pre-release review of a previous presumptive date order and the date of release has not been changed; and (b) on any other Notice of Action where no change in the previous decision is made.

■ 2.13-05. *Summary Formats.*

Use the hearing formats as indicated in Appendix 1. In preparing correspondence, hearing summaries, reports and other documentation, use professional language which describes the subject and explains the Commission's position clearly, simply, and accurately. It should be kept in mind that much of what is written is disclosable to the prisoner or releasee and may come before the Courts, the Congress, or the public. Language which may be interpreted as discriminatory, prejudicial, or insensitively descriptive discredits the Commission and the writer, and its use violates the Commission policy.

■ 2.13-06. *Standardized Wording on Orders.*

Use the standardized wording in Appendix 2. It is conceivable that there may be an action not covered by this wording. In such instances, wording should be developed to fit the action desired.

■ 2.13-07. *Co-defendants.*

Co-defendants and their parole status including sentence and guideline data, any reasons for departure from the guidelines, and months served will be listed, when available, in initial and reconsideration summaries.

■ 2.13-08. *Conditions of Parole.*

Special conditions (including drug aftercare) should be recommended, where appropriate, by the hearing examiner at the time the presumptive date (whether by parole or mandatory release) is determined (normally at the initial hearing). Where appropriate, special conditions may be added or modified at any time prior to the prisoner's release.

■ 2.13-09. *Additions to Docket.*

Where, by reason of transfer, a prisoner has missed his initial hearing, subsequent hearing, or revocation hearing, the prisoner may be added to the docket at the request of the Warden and with the approval of the hearing examiner. No other interviews for cases not on the docket will be conducted without written approval from the Regional Commissioner.

■ 2.13-10. *Visitors at Hearings.*

(a) *In General.* As a general principle, Parole Commission hearings are not open to the public. However, where good cause exists, visitors may be permitted to attend provided their presence will not interfere with the orderly course of the proceedings. The hearing examiner determines who will be admitted to the hearing room. If he cannot make the final decision in accordance with subsection (b), he will communicate with the authorized official.

(b) *Criteria.* The Commission has found it appropriate to allow the following classes of visitors (other individuals must be considered by the hearing examiner on a case by case basis). Persons having a direct interest in a case shall be considered under

procedures dealing with representatives.

(1) U.S. Parole Commission, Bureau of Prisons, or U.S. Probation Service employees; and Federal Judges or Magistrates.

(2) Federal or State Legislators; State Judges; State Parole or Probation personnel.

(3) Newspaper or Magazine Correspondents (permission must be granted by the Regional Commissioner).

(4) Researchers (prior permission must be granted by the Chairman).

(5) Students in fields related to criminal justice.

(c) *Restrictions.*

(1) Visitors are not to participate in hearing proceedings. Examiners will not discuss cases with visitors in any instance until after a recommendation has been made and the summary dictated.

(2) Visitors will not be permitted to use recording devices.

(3) Examiners may request visitors to leave the hearing room when it is affecting the progress of the hearing. Examiners should also remove visitors from the room prior to hearing cases which, in their judgment, involve matters unusually sensitive as far as the prisoner is concerned.

(4) Visitors should not be permitted to enter or leave the hearing room during the proceedings (for sake of the dignity and orderliness of the proceedings).

(5) Except for visitors listed under subsection (b)(1), permission must be granted in writing by the prisoner (at a revocation hearing the attorney must also be in agreement) for visitors to be present at hearings. It must be explicitly and forcefully made clear to the prisoner that he has a right not to have visitors present, and that such action will not affect the Commission action on his case in any way. Examiners should be careful that a prisoner does not feel coerced to allow such visitors to be present.

(6) Visitors should not be present at hearings on original jurisdiction cases, or cases which in the judgment of the examiner will be referred to the Regional Commissioner as original jurisdiction cases.

(7) No visitor shall remain in the hearing room during deliberations or dictation unless specifically authorized by the hearing examiner.

■ 2.13-11. *Interested Parties Opposing Parole.*

(a) A victim/witness (verified by the Bureau of Prisons Victim/Witness Coordinator) or a criminal justice official (e.g., U.S. Attorney, FBI or DEA Agent) may attend a specific parole hearing to oppose parole without special permission. Any other person wishing to attend a hearing to oppose parole must obtain permission from the Regional Commissioner in advance of the hearing. Requests for such permission must be in writing. Interested persons opposing parole are encouraged to submit written comments in lieu of a personal appearance. Where a personal appearance is made, any persons opposing parole will be requested to select one person as a spokesperson. However, it is in the hearing examiner's discretion, where appropriate, to permit additional persons to be present. A continuance due to the absence of an interested party opposing parole shall be in the discretion of the hearing examiner and shall be granted only for good cause. A brief memo to the file is to be prepared.

(b) An interested party opposing parole shall be provided an opportunity to make a statement at the appropriate time determined by the hearing examiner. The prisoner may be excluded at the request of such person for good cause, or when it appears to the hearing examiner that institutional security or the personal safety of such person might be involved. The reason for any such exclusion must be documented in the record and any testimony out of the prisoner's presence must be promptly summarized for the prisoner with an opportunity for response.

(c) Upon request, any victim/witness (verified through the Bureau of Prisons Victim/Witness Coordinator) or criminal justice system official may be notified of the Commission's official decision in accordance with 2.24-13. The hearing examiner shall

attach the appropriate label (a blue label) to the case material to point out the request for notification. The hearing examiner may inform an interested party opposing parole of his recommended decision following the hearing, but the applicable reasons (e.g., guideline indicants) are to be provided only as part of the written notification under 2.24-13.

(d) Upon request, a subpoenaed witness shall be notified of the Commission's decision in his case in accordance with 2.24-13. The hearing examiner will note in the summary whether the witness chose to request that the Parole Commission notify him/her of the results of the hearing. If so, the Hearing Examiner will return all completed "Victim/Witness Notification Request" forms to the Commission for processing.

(e) The Hearing Examiner shall present the Commission's "Victim/Witness Questionnaire" to any witness subpoenaed to the hearing, including any witness representing law enforcement, and request that the witness complete the questionnaire and return it to the Commission in the stamped, self-addressed envelope provided.

■ 2.13-12. *Continuances.*

If a hearing is continued, a tape of the discussion with the prisoner leading to the continuance is made. The hearing examiner, at the request of the prisoner, may grant a continuance to the next docket for good cause (for revocation hearings, see 2.50-05). A second continuance may be granted by the examiner only for compelling reasons. A form, available at the institution, shall be executed requesting the continuance. Note: A request for a third or additional continuance must be in writing to the Regional Commissioner and must be received at least ten days prior to the scheduled hearing docket. When a continuance is granted, a memo of the reasons for the continuance is prepared and a Commission order is completed.